UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/589,441	01/24/2007	Alexander Gruzman	G368.312-0001	7254

164 7590 05/26/2009

KINNEY & LANGE, P.A.
THE KINNEY & LANGE BUILDING
312 SOUTH THIRD STREET
MINNEAPOLIS, MN 55415-1002

EXAMINER	
SMITH, PRESTON	
ART UNIT	PAPER NUMBER
1794	

MAIL DATE	DELIVERY MODE
05/26/2009	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/589,441	GRUZMAN, ALEXANDER	
	Examiner	Art Unit	
	PRESTON SMITH	1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *13 June 2008*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *18-32* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *18-32* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *15 August 2006* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date *06/13/2008,06/02/2008*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 32 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 32, the term "elastic" in claim 32 is a relative term which renders the claim indefinite. The term "elastic" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claim 18, 20, 23-24, 30, 32 rejected under 35 U.S.C. 103(a) as being unpatentable over Lawrence J. Paumen, US PG-Pub 2003/0085234, as evidenced by Keith Pickford, US-Patent 6,261,625.

Regarding claim 18 and 20, Paumen teaches placing meat and marinades (curing) into a container (sleeve) (since both the ingredients and meat are added together into the container, it is considered that the ingredients are added to the meat prior to the container being inserted into the tumbler) and placing this container into a tumbler (paragraphs 0030 and 0031. Also, the sleeve or container can be seen in 11 of Fig 2 and the tumbler can be seen in 30 of Fig 2). The tumbling only requires about 15 minutes for most meats (0031). (also as pointed out in paragraph 0023, it is undesirable for the tumbling operation to tear fragile meat tissues so it is considered that the structure of the meat to be tumbled is preserved during the tumbling operation).

Paumen fails to teach fish meat.

Paumen does not specifically teach the kind of meat used however the claimed "fish meat" is essentially a subset of the broad "meat" of Paumen. It is widely known in the art to marinate fish meats as evidenced by Pickford, column 5, lines 10-14. It would have thus been obvious to one having ordinary skill in the art to select any kind of meat including fish meat (a widely known meat that is marinated) in order to carry out the process of Paumen. Fish meat is widely known to be highly desired by consumers because it contains high amounts of proteins and low amounts of fat and thus one of ordinary skill would have been motivated to use fish meat as the specific meat with the invention of Paumen since this would produce a fish product that many consumers would desire.

Regarding claims 23-24, Paumen teaches rinsing the meat product with water after tumbling in order to remove residues (0033).

Regarding claim 30, it is not clear if the skin is present on the fish in the reference of Pickford however it would have been obvious to one having ordinary skill in the art at the time of the invention to keep the fish skin (rind) on the fish in the composite invention since some consumers would prefer the taste of the skin in their food products.

Regarding claim 32, the container of Paumen is described as being made of plastic resin (0040). Plastic resins are known to have some degree of elasticity and thus it is consider that the container (sleeve) is made of an elastic material.

Claim 19 rejected under 35 U.S.C. 103(a) as being unpatentable over Lawrence J. Paumen, US PG-Pub 2003/0085234 in view of Catherine O. Tracy, US-Patent 4,576,825, as evidenced by Keith Pickford, US-Patent 6,261,625.

Regarding claim 19, the references teach the invention of claim 18, in particular, Paumen teaches marinating/curing the meat. The references fail to teach injecting the ingredients into the meat.

Tracy discloses that it was well known in the art to inject curing solutions containing nitrite, acid, and other ingredients into meat (column 3, lines 61-67). It would have been obvious to one having ordinary skill in the art at the time of the invention to combine this teaching of Tracy with the composite invention discussed previously since further injecting the marinades of the composite invention into the meat would insure that the marinades are effectively dispersed inside of the meat of the composite invention.

Claims 21-22 rejected under 35 U.S.C. 103(a) as being unpatentable over Lawrence J. Paumen, US PG-Pub 2003/0085234 in view of Werner Hoffmeister, DE

003416759 (see abstract NPL), as evidenced by Keith Pickford, US-Patent 6,261,625.

Regarding claims 21-22, Paumen teaches marinating (curing) the meat product with marinades as discussed previously however Paumen fails to explicitly teach marinating with salts.

Hoffmeister teaches that it is well known in the art to produce marinated fish products by curing the fish meat in a curing bath containing salt and water (see abstract NPL). It would have been obvious to one having ordinary skill in the art at the time of the invention to further cure the fish of the composite invention with the ingredients of Hoffmeister since salt is a well known preservative and curing the fish with salt would permit the fish product to be stored for a longer amount of time.

Claim 25 rejected under 35 U.S.C. 103(a) as being unpatentable over Lawrence J. Paumen, US PG-Pub 2003/0085234 in view of Minoru Okada, US-Patent 4,880,654, as evidenced by Keith Pickford, US-Patent 6,261,625.

Regarding claim 25, the references teach the invention of claim 23 however the references fail to further teach placing the meat into a mold and then cooking it.

Okada teaches that it is well known in the art to place fish meat products into molds and cook them (column 5, line 25). It would have been obvious to one having ordinary skill in the art at the time of the invention to further combine this step with the

composite invention of Paumen in view of Pickford since this would produce fish products with aesthetically pleasing and attractive appearances that many consumers would find desirable.

Claims 26-27 rejected under 35 U.S.C. 103(a) as being unpatentable over Lawrence J. Paumen, US PG-Pub 2003/0085234 in view of Minoru Okada, US-Patent 4,880,654 and Robin Martin, WO 95/04102, as evidenced by Keith Pickford, US-Patent 6,261,625

Regarding claims 26-27, the references teach the invention of claim 25 as discussed previously. The references fail to teach removing the product from the "sleeve" after the tumbling and wrapping the meat product in a wrapping material prior to cooking it.

Martin teaches that it is well known in the art to wrap meat products in perforated films that may be used to contain the product during cooking (see abstract). It would have been obvious to one having ordinary skill in the art at the time of the invention to wrap the meat product of the composite invention discussed previously prior to cooking it since this wrapping would force the juices to remain inside of the food product but at the same time permit steam formed from evaporating water to escape (see abstract) from the food product (see page 4, paragraphs 2 and 3).

Claims 28 rejected under 35 U.S.C. 103(a) as being unpatentable over Lawrence J. Paumen, US PG-Pub 2003/0085234 in view of Donald Peterson, US-Patent 3,913,175, as evidenced by Keith Pickford, US-Patent 6,261,625

Regarding claim 28, the references teach the composite invention discussed previously however the references fail to teach placing a tube next to a sleeve such that the meat can be transferred from the tube to the sleeve.

Peterson teaches that it is well known in the art to feed meat through a tube and into a mold (column 3, lines 1-3). It would have been obvious to one having ordinary skill in the art at the time of the invention to combine this concept with the composite invention and thus feed the meat of the composite invention through a tube and into a sleeve or container since this would eliminate the need of having to manually stuff the meat into the mold (which may result in damage to the meat).

Claims 29 rejected under 35 U.S.C. 103(a) as being unpatentable over Lawrence J. Paumen, US PG-Pub 2003/0085234 in view of Dick McGuire, US-Patent 4,722,117, as evidenced by Keith Pickford, US-Patent 6,261,625.

Regarding claim 29, the references teach the invention of claim 18 however the references fail to teach cleaning the fish prior to processing it.

McGuire teaches that is well known in the art to clean fish products by scrubbing them with water in order to remove unwanted matter (column 1, lines 20-22). It would

have been obvious to one having ordinary skill in the art at the time of the invention to combine this concept of scrubbing fish products with water in order to clean them with the composite invention discussed previously since this would ensure that the product to be processed wouldn't contain any unwanted matter.

Claims 31 rejected under 35 U.S.C. 103(a) as being unpatentable over Lawrence J. Paumen, US PG-Pub 2003/0085234 in view of Alfred T. Fraser, US-Patent 4,781,930, as evidenced by Keith Pickford, US-Patent 6,261,625.

Regarding claim 31, the references teach the invention of claim 18 as discussed previously however the references fail to further teach freezing the product.

Fraser teaches that it is well known in the art to freeze treated fish products(column 2, lines 15-20). It would have been obvious to one having ordinary skill in the art at the time of the invention to further freeze the treated (tumbling process discussed previously) fish product of the composite invention since this would preserve the fish (column 2, lines 15-20 of Fraser) for future storage.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to PRESTON SMITH whose telephone number is (571)270-7084. The examiner can normally be reached on Mon-Th 6:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rena Dye can be reached on (571)272-3186. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Drew E Becker/
Primary Examiner, Art Unit 1794

prs